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SENATE BILL 61

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY
GLORIA HOWES

AN ACT

RELATING TO ELECTIONS; AMENDING, REPEALING AND ENACTING CERTAIN
SECTIONS OF THE NMSA 1978 PERTAINING TO THE FILLING OF VACANCY
IN THE OFFICE OF UNITED STATES REPRESENTATIVE; DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] UNITED STATES REPRESENTATIVE--
VACANCY. --

A. Ten days after a vacancy occurs in the office of
United States representative, except as provided in Subsection G
of this section, the governor shall by proclamation call a
special primary election to be conducted in the congressional
district not less than thirty-five nor more than forty-one days
after the proclamation for the purpose of nominating a candidate
of each major political party for the special United States

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[bracketed material] = delete

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1 representative election provided for in this section. A
2 declaration of candidacy and nominating petitions shall be filed
3 by a candidate for nomination of a major political party not
4 later than 5:00 p.m. of the twenty-first day following the
5 special primary election proclamation. The filing shall be
6 pursuant to the provisions of Section 1-8-33 NMSA 1978. The
7 provisions of Article 8 of the Election Code pertaining to
8 procedures for nominations and primary elections shall apply;
9 provided, however, if there is a conflict between this section
10 and other provisions of Article 8 of the Election Code, the
11 provisions of this section shall control.

12 B. Nominations by minor political parties for the
13 special election to fill the vacancy in the office of United
14 States representative shall be made in the manner provided by
15 the rules of that party; provided that such nomination is
16 certified to the secretary of state by the state chairman of
17 that party no later than 5:00 p.m. on the fifty-sixth day
18 preceding the date of the special United States representative
19 election.

20 C. Declarations of independent candidacy to fill the
21 vacancy in the office of United States representative and
22 nominating petitions thereto shall be filed with the secretary
23 of state no later than 5:00 p.m. on the fifty-sixth day
24 preceding the date of the special United States representative
25 election.

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1 D. Write-in candidates are permitted in the special
2 primary election only for the nomination by the major political
3 party with which that person is affiliated as shown by the
4 person's certificate of registration and shall have the
5 qualifications to be a candidate in the special primary election
6 for the political party for which the person is a write-in
7 candidate. A declaration of intent to be a write-in candidate
8 shall be filed with the secretary of state before 5:00 p.m.
9 prior to the twenty-first day following the proclamation calling
10 for the special primary election.

11 E. A special United States representative election
12 shall be held in the congressional district not less than
13 eighty-seven nor more than ninety-five days after the date of
14 vacancy for the purpose of filling the vacancy in the office of
15 United States representative.

16 F. Special United States representative elections
17 called for the purpose of filling a vacancy in the office of
18 United States representative shall be conducted in accordance
19 with the provisions of the Election Code; provided, however, if
20 there is a conflict between this section and other provisions of
21 the Election Code, the provisions of this section shall control.

22 G. If a vacancy occurs in the office of United
23 States representative after the date of the regular primary
24 election and before the date of the general election of that
25 same year, such vacancy shall be filled at that general election

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1 of the same year. Candidates seeking the office of United
2 States representative in such general election for the next
3 succeeding term shall be deemed to be candidates for the
4 unexpired term as well, and the candidate elected shall take
5 office upon the certification of the election results.

6 Section 2. Section 1-8-36.1 NMSA 1978 (being Laws 1981,
7 Chapter 156, Section 1, as amended) is amended to read:

8 "1-8-36.1. PRIMARY ELECTION LAW - WRITE-IN CANDIDATES. --

9 A. Write-in candidates are permitted in a special
10 primary election or the regular primary election only for the
11 offices of United States representative, ~~members~~ of the
12 legislature, district judges, district attorneys, state board of
13 education, magistrates and any office voted upon by all voters
14 of the state.

15 B. A person may be a write-in candidate only for
16 nomination by the major political party with which he is
17 affiliated as shown by his certificate of registration, and such
18 person shall have the qualifications to be a candidate in the
19 primary election for the political party for which he is a
20 write-in candidate.

21 C. A person desiring to be a write-in candidate for
22 one of the offices listed in Subsection A of this section in the
23 primary election shall file with the proper filing officer a
24 declaration of intent to be a write-in candidate. Such
25 declaration of intent shall be filed before 5:00 p.m. on the

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1 second Tuesday in March.

2 D. A write-in vote shall be counted and canvassed
3 only if:

4 (1) the name written in is the name of a
5 declared write-in candidate and shows two initials and last
6 name; first name, middle initial or name and last name; first
7 and last name; or the full name as it appears on the declaration
8 of intent to be a write-in candidate and misspellings of the
9 above combinations that can be reasonably determined by a
10 majority of the members of the precinct board to identify a
11 declared write-in candidate; and

12 (2) the name is written in the proper slot on
13 the voting machine or on the proper line provided on an absentee
14 ballot or emergency paper ballot for write-in votes for the
15 office for which the candidate has filed a declaration of
16 intent.

17 E. At the time of filing the declaration of intent
18 to be a write-in candidate, the write-in candidate shall be
19 considered a candidate for all purposes and provisions relating
20 to candidates in the Election Code, including the obligations to
21 report under the Campaign Reporting Act, except that he shall
22 not be entitled to have his name printed on the ballot.

23 F. No unopposed write-in candidate shall have his
24 nomination certified unless he receives at least the number of
25 write-in votes in the primary election as he would need

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1 signatures on a nominating petition pursuant to the requirements
2 set out in Section 1-8-33 NMSA 1978.

3 G. A write-in vote shall be cast by writing in the
4 name. As used in this section, "write-in" does not include the
5 imprinting of any name by rubber stamp or similar device or the
6 use of preprinted stickers or labels."

7 Section 3. REPEAL.--Section 1-15-18.1 NMSA 1978 (being
8 Laws 1983, Chapter 232, Section 16) is repealed.

9 Section 4. EMERGENCY.--It is necessary for the public
10 peace, health and safety that this act take effect immediately.

SENATE RULES COMMITTEE SUBSTITUTE FOR
SENATE BILL 61

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR A SPECIAL PRIMARY ELECTION
FOR THE OFFICE OF UNITED STATES REPRESENTATIVE; AMENDING,
REPEALING AND ENACTING SECTIONS OF THE ELECTION CODE; DECLARING
AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Election Code is enacted to
read:

"[NEW MATERIAL] UNITED STATES REPRESENTATIVE SPECIAL
ELECTION. --

A. When a vacancy in the office of United States
representative occurs, except as provided in Subsection D of
this section, the governor shall by proclamation call a special
primary election:

(1) on the first Tuesday following the vacancy;

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1 or

2 (2) on the second Tuesday following the vacancy,
3 if that vacancy occurs after the preceding Friday.

4 The special primary election shall be conducted in the
5 congressional district not more than sixty days after the
6 issuance of the proclamation for the purpose of nominating a
7 candidate from each major political party for the special United
8 States representative election. A declaration of candidacy
9 shall be filed by a candidate for nomination by a major
10 political party between the hours of 9:00 a.m. and 5:00 p.m. of
11 the fourteenth day following the issuance of the special primary
12 election proclamation.

13 B. Nominations by minor political parties for the
14 special election to fill the vacancy in the office of United
15 States representative shall be made in the manner provided for
16 in Subsection A of section.

17 C. Declarations of independent candidacy to fill the
18 vacancy in the office of United States representative shall be
19 made in the manner provided for in Subsection A of this section.

20 D. If a vacancy occurs in the office of United States
21 representative after the date of the regular primary election
22 and before the date of the general election of the same year,
23 that vacancy shall be filled in that general election of the
24 same year. Candidates seeking the office of United States
25 representative in that general election for the next succeeding

1 term shall be deemed to be candidates for the unexpired term as
2 well, and the candidate elected shall take office upon the
3 certification of the election results.

4 E. Precincts may be consolidated as provided in Section
5 1-24-3 NMSA 1978 at the discretion of the county clerk.

6 F. A special United States representative election shall
7 be held in the congressional district not more than one hundred
8 days after the date of the vacancy in the office of United States
9 representative for the purpose of filling that vacancy."

10 Section 2. A new section of the Election Code is
11 enacted to read:

12 "[NEW MATERIAL] FILING FEE AND DECLARATION OF CANDIDACY FOR
13 UNITED STATES REPRESENTATIVE SPECIAL ELECTION. --

14 A. A candidate seeking the office of United States
15 representative in a special primary election shall file either a
16 declaration of candidacy accompanied by a filing fee of two hundred
17 eighty dollars (\$280) or a pauper's statement with the secretary of
18 state.

19 B. In the event a candidate is unable to pay the filing
20 fee, he may file a statement with the secretary of state at the
21 time he files his declaration of candidacy to the effect that he is
22 without financial means to pay the filing fee. The statement shall
23 be sworn and subscribed to on the form prescribed by the secretary
24 of state and shall be attached to the declaration of candidacy."

25 Section 3. Section 1-6-5 NMSA 1978 (being Laws 1969, Chapter

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1 240, Section 131, as amended by Laws 1993, Chapter 314, Section 43
2 and also by Laws 1993, Chapter 316, Section 43) is amended to read:

3 "1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT-- [~~MAKING~~]
4 MARKING AND DELIVERY OF BALLOT IN PERSON. --

5 A. The county clerk shall mark each completed absentee
6 ballot application with the date and time of receipt in the clerk's
7 office and enter the required information in the absentee ballot
8 register. The county clerk shall then determine if the applicant
9 is a voter, an absent uniformed services voter or an overseas
10 voter.

11 B. If the applicant has no valid certificate of registra-
12 tion on file in the county and he is not a federal qualified
13 elector or if the applicant states he is a federal qualified
14 elector but his application indicates he is not a federal qualified
15 elector, no absentee ballot shall be issued and the county clerk
16 shall mark the application "rejected" and file the application in a
17 separate file from those accepted.

18 C. The county clerk shall notify in writing each
19 applicant of the fact of acceptance or rejection of his application
20 and, if rejected, shall explain why the application was rejected.

21 D. If the applicant is determined to be a voter or a
22 federal qualified elector, the county clerk shall mark the
23 application "accepted" and deliver or mail to the applicant an
24 absentee ballot and the required envelopes for use in returning the
25 ballot. Acceptance of an application of a federal qualified

1 elector constitutes registration for the election in which the
 2 ballot is to be cast. Acceptance of an application from an
 3 overseas voter who is not an absent uniformed services voter
 4 constitutes a request for changing information on the certificate
 5 of registration of any such voter. No absent voter shall be
 6 permitted to change his party affiliation during those periods when
 7 change of party affiliation is prohibited by the Election Code.
 8 Upon delivery or mailing of an absentee ballot to any applicant who
 9 is a voter, an appropriate designation shall be made on the
 10 signature line of the signature roster next to the name of the
 11 person who has been sent an absentee ballot.

12 E. If an application for an absentee ballot is delivered
 13 in person to the county clerk and is accepted, the county clerk
 14 shall deliver the absentee ballot and it shall be marked by the
 15 applicant in a voting booth of a type prescribed by the secretary
 16 of state in the courthouse, sealed in the proper envelopes and
 17 otherwise properly executed and returned to the county clerk or his
 18 authorized representative before the applicant leaves the office of
 19 the county clerk. The act of marking the absentee ballot in the
 20 office of the county clerk shall be a convenience to the voter in
 21 the delivery of the absentee ballot and does not make the office of
 22 the county clerk a polling place subject to the requirements of a
 23 polling place in the Election Code other than is provided in this
 24 subsection. It shall be unlawful to solicit votes, display or
 25 otherwise make accessible any posters, signs or other forms of cam-

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1 paign literature whatsoever in the clerk's office. Except as
2 provided in Subsection F of this section, absentee ballots may be
3 marked in person during the regular hours and days of business at
4 the county clerk's office from 8:00 a.m. on the fortieth day
5 preceding the election up until 5:00 p.m. on the Saturday immedi-
6 ately prior to the date of the election. In marking the absentee
7 ballot, the voter may be assisted by one person of the voter's
8 [own] choice upon the execution with the county clerk of an
9 affidavit for assistance stating [therein] that the voter meets at
10 least one of the conditions for receiving such assistance as is set
11 forth by the provisions of Section 1-12-12 NMSA 1978.

12 F. For a special primary election, and a special United
13 States representative election, absentee ballots may be marked in
14 person during the regular hours and days of business at the county
15 clerk's office from 8:00 a.m. on the fourteenth day preceding the
16 election up until 5:00 p.m. on the third day prior to that
17 election.

18 [~~F.~~] G. Absentee ballots shall be airmailed to applicants
19 temporarily domiciled inside or outside the continental limits of
20 the United States not later than on the Thursday immediately prior
21 to the date of the election.

22 [~~G.~~] H. No absentee ballot shall be delivered or mailed
23 to any person other than the applicant for such ballot.

24 [~~H.~~] I. The county clerk shall accept and process with
25 respect to a primary or general election for any federal office,

1 any otherwise valid voter registration application from an absent
 2 uniformed services voter or overseas voter received by mail or by
 3 facsimile if the application is received not less than thirty days
 4 before the election. The county clerk shall also accept and
 5 process federal write-in absentee ballots from overseas voters in
 6 general elections for federal offices in accordance with the
 7 provisions of Section 103 of the federal Uniformed and Overseas
 8 Citizens Absentee Voting Act.

9 J. For a special primary election and a special United
 10 States representative election, a qualified elector who is a member
 11 of the United States armed forces or the United States merchant
 12 marine, a family member of that qualified elector, or a qualified
 13 elector living outside the United States, may apply for an absentee
 14 ballot by facsimile. A clerk may send and receive facsimile
 15 absentee ballots that have been voted from eligible qualified
 16 electors. "

17 Section 4. Section 1-6-7 NMSA 1978 (being Laws 1969, Chapter
 18 240, Section 133, as amended) is amended to read:

19 "1-6-7. FORM OF ABSENTEE BALLOT. --As soon as candidates and
 20 questions to be voted upon have been determined for each election,
 21 the county clerk shall procure a supply of suitable absentee
 22 ballots. The absentee ballot shall be numbered and shall be, as
 23 nearly as practicable, in the same form as prescribed by the
 24 secretary of state for emergency ballots. However, to reduce
 25 weight and bulk for transport of absentee ballots, the size and

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 [bracketed material] = delete

1 weight of the paper for envelopes, ballots and instructions shall
2 be reduced as much as possible. Absentee ballots shall be printed
3 at least forty days prior to the date of a primary election and
4 forty-nine days prior to the date of a general election. Absentee
5 ballots shall be printed and shall be delivered to the county clerk
6 at least sixteen days prior to the date of a special primary
7 election or a special United States representative election.
8 Absentee ballots for any other election shall be printed at least
9 thirty-five days prior to the date of the election. "

10 Section 5. Section 1-6A-5 NMSA 1978 (being Laws 1993, Chapter
11 37, Section 5, as amended) is amended to read:

12 "1-6A-5. PROCESSING APPLICATION. - -

13 A. The county clerk shall mark each completed
14 absentee-early application with the date and time of receipt in the
15 clerk's office and enter the required information in the absentee
16 ballot register.

17 B. If the applicant has no valid affidavit of
18 registration on file in the county and he is not a federal
19 qualified elector, he shall not be allowed to vote. The county
20 clerk shall mark the application "rejected" and file the
21 application in a separate file from those accepted.

22 C. If the applicant presents proof of identification and
23 is determined to be a voter or a federal qualified elector, the
24 county clerk shall mark the application "accepted" and deliver a
25 marksense ballot or allow the voter to vote on the direct-recording

1 electronic machine. Upon acceptance of the application, an
2 appropriate designation shall be made on the absentee register.

3 D. Except as provided in Subsection E of this section,
4 absentee-early voting may be done in person during the regular
5 hours of business at the county clerk's office or other locations
6 specified by the county clerk; provided that in class A counties,
7 the county clerk shall establish not less than four alternative
8 locations as satellite polling places. Absentee-early voting may
9 be done from 8:00 a.m. on the twentieth day preceding the election
10 up until 5:00 p.m. on the Saturday immediately prior to the date of
11 the election. In voting absentee-early, the voter may be assisted
12 by one person of the voter's ~~own~~ choice.

13 E. Absentee-early voting for a special primary election
14 or for a special United States representative election may be done
15 at the county clerk's office or other location specified by the
16 county clerk. Where less than the entire territory of a class A
17 county is included in a district where a special primary election
18 or a special United States representative election will be held,
19 the number of absentee-early satellite polling places may be
20 reduced proportionally, at the discretion of the county clerk.
21 Absentee-early voting may be done from 8:00 a.m. on the eleventh
22 day preceding the election up until 5:00 p.m. three days prior to
23 the date of the election. In voting absentee-early, the voter may
24 be assisted by one person of the voter's choice.

25 ~~[E.]~~ F. The secretary of state and county clerk shall

1 make reasonable efforts to publicize and inform voters of the times
2 and locations for absentee-early voting. "

3 Section 6. Section 1-8-50 NMSA 1978 (being Laws 1977, Chapter
4 322, Section 6, as amended) is amended to read:

5 "1-8-50. INDEPENDENT CANDIDATES FOR GENERAL [~~OR UNITED STATES~~
6 ~~REPRESENTATIVE SPECIAL~~] ELECTIONS-- NOMINATING PETITION FORM --

7 A. As used in Sections [~~3-8-27.1 through 3-8-27.8 NMSA~~
8 ~~1953~~] 1-8-45 through 1-8-52 NMSA 1978, "nominating petition" means
9 the form or forms used for obtaining the required number of
10 signatures of voters [~~which~~] that is signed on behalf of the person
11 wishing to become an independent candidate for a political office
12 in a general [~~or United States representative special~~] election
13 requiring a nominating petition.

14 B. The nominating petition shall be on paper
15 approximately eight and one-half inches wide and fourteen inches
16 long with numbered lines for signatures spaced approximately three-
17 eighths of an inch apart and shall be in the following form:

18 "NOMINATING PETITION FOR INDEPENDENT CANDIDACY

19 I, the undersigned, a registered voter of the
20 county of _____, New Mexico, hereby
21 nominate _____, who
22 resides at _____ in the county of
23 _____, New Mexico, as an independent candidate
24 for the office of _____, to be voted
25 for at the general election [~~United States~~

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1 ~~representative special election~~] to be held on November
 2 _____, 19 _____, and I declare that I am a resident of
 3 the state, district, county or area to be represented by
 4 the office for which the person being nominated is a
 5 candidate. I also declare that I have not signed, and
 6 will not sign, any nominating petition for more persons
 7 than the number of candidates necessary to fill such
 8 office at the next ensuing general election.

9 1. _____
 10 (usual (name printed (address as (city)
 11 signature) as registered) registered)

12 2. _____
 13 (usual (name printed (address as (city). "
 14 signature) as registered) registered)

15 C. The secretary of state shall furnish to each
 16 county clerk a sample of the nominating petition form, a copy
 17 of which shall be made available by the county clerk upon
 18 request of any candidate as provided by the Election Code.

19 D. The signature of the voter shall not be counted
 20 unless the entire line is filled out in full and is upon the
 21 form prescribed by this section.

22 E. When more than one sheet is required for a
 23 petition, each of the sheets shall be in the form prescribed
 24 by this section, and all sheets shall be firmly secured by a
 25 staple or other suitable fastening. "

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 [bracketed material] = delete

1 Section 7. Section 1-8-52 NMSA 1978 (being Laws 1977,
2 Chapter 322, Section 8, as amended) is amended to read:

3 "1-8-52. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED
4 STATES REPRESENTATIVE SPECIAL ELECTIONS--NOMINATING
5 PETITIONS--CIRCULATION--DATE OF FILING.--

6 A. Declarations of independent candidacy [~~and~~
7 ~~nominating petitions~~] for a vacancy in the office of United
8 States representative shall be filed with the proper filing
9 officer during the period commencing at 9:00 a.m. on the
10 [~~second Tuesday of July of each even numbered year~~] fourteenth
11 day following the issuance of the special primary election
12 proclamation and ending at 5:00 p.m. on that same day [~~and not~~
13 ~~later than 5:00 p.m. on the fifty-sixth day preceding any~~
14 ~~United States representative special election~~].

15 B. Declarations of independent candidacy and
16 nominating petitions for the office of president of the United
17 States or for any other office to be filled at a general
18 election shall be filed with the proper filing officer during
19 the period commencing at 9:00 a.m. on the fifty-sixth day
20 prior to [~~the~~] that general election and ending at 5:00 p.m.
21 on the same day. "

22 Section 8. Section 1-12-19.1 NMSA 1978 (being Laws 1981,
23 Chapter 156, Section 2, as amended) is amended to read:

24 "1-12-19.1. GENERAL ELECTIONS--WRITE-IN CANDIDATES.--

25 A. A person desiring to be a write-in candidate in

1 a general election [~~a special election for United States~~
 2 ~~representative~~] or a statewide special election shall file
 3 with the proper filing officer a declaration of intent to be a
 4 write-in candidate. The declaration of intent shall be filed
 5 between 9:00 a.m. and 5:00 p.m. on the sixty-third day
 6 immediately preceding the election.

7 B. The form of the declaration of intent shall be
 8 prescribed by the secretary of state and shall contain a sworn
 9 statement by the candidate that he is qualified to be a
 10 candidate for and to hold the office for which he is filing.

11 C. At the time of filing the declaration of intent
 12 to be a write-in candidate, the write-in candidate shall be
 13 considered a candidate for all purposes and provisions
 14 relating to candidates in the Election Code, including the
 15 obligation to report under the Campaign Reporting Act, except
 16 that he shall not be entitled to have his name printed on the
 17 ballot.

18 D. The secretary of state shall, not less than ten
 19 days before the general election, certify the names of the
 20 declared write-in candidates to the county clerks of every
 21 county affected by such candidacy.

22 E. No person shall be a write-in candidate in the
 23 general election who was a candidate in the primary election
 24 immediately prior to the general election.

25 F. A vote for a write-in candidate shall be counted

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1 and canvassed only if:

2 (1) the name written in is the name of a
3 declared write-in candidate and shows two initials and last
4 name; first name, middle initial or name and last name; first
5 and last name; or the full name as it appears on the
6 declaration of intent to be a write-in candidate and
7 misspellings of the above combinations that can be reasonably
8 determined by a majority of the members of the precinct board
9 to identify a declared write-in candidate; and

10 (2) the name is written in the proper office or
11 entered upon the keyboard on the voting machine or on the
12 proper line provided on a marksense ballot, absentee ballot or
13 emergency paper ballot for write-in votes for the office for
14 which the candidate has filed a declaration of intent.

15 G. No unopposed write-in candidate shall have his
16 election certified unless he receives at least the number of
17 write-in votes as he would need signatures on a nominating
18 petition pursuant to the requirements in Section 1-8-33 NMSA
19 1978.

20 H. A write-in vote shall be cast by writing in the
21 name. As used in this section, "write-in" does not include
22 the imprinting of any name by rubber stamp or similar device
23 or the use of preprinted stickers or labels. "

24 Section 9. Section 1-13-16 NMSA 1978 (being Laws 1969,
25 Chapter 240, Section 319, as amended) is amended to read:

"1-13-16. POST-ELECTION DUTIES-- STATE CANVASS METHOD. --

A. The state canvass shall be made from the election returns transmitted directly to the secretary of state from each of the precinct boards and, in the case of candidates voted upon by a district composed of two or more counties, from the certificates transmitted by the county canvassing boards.

B. Upon the completion of the canvass, but not sooner than the thirty-first day after any primary, general or district special election, or the tenth day after any special primary election or special United States representative election, the state canvassing board shall issue to those candidates entitled by law the appropriate certificate of election or, in the case of a primary election or special primary election, a certificate of nomination.

C. The state canvassing board may designate a person or persons to compare the totals appearing on the election returns, statements of canvass and certificates and to certify the results of their findings to the state canvassing board. "

Section 10. Section 1-24-2 NMSA 1978 (being Laws 1989, Chapter 295, Section 2) is amended to read:

"1-24-2. SPECIAL ELECTION PROCEDURES-- PROCLAMATION-- PUBLICATION. --

A. Whenever a special election is to be called or

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1 is required by law, the governor or the appropriate governing
2 body shall by resolution issue a public proclamation calling
3 the election. The proclamation shall [~~forthwith~~] be filed
4 with the secretary of state or with the appropriate county
5 clerk.

6 B. The proclamation shall specify:

7 (1) the date on which the special election will
8 be held;

9 (2) the purpose for which the special election
10 is called;

11 (3) if officers are to be elected or positions
12 on the governing body are to be filled, the date on which
13 declarations of candidacy are to be filed;

14 (4) if a question is to be voted upon, the
15 [~~test~~] text of that question;

16 (5) the precincts in each county in which the
17 election is to be held and the location of each polling place
18 in the precinct;

19 (6) the location of each absentee-early polling
20 place:

21 [~~(6)~~] (7) the hours that each polling place
22 will be open; and

23 [~~(7)~~] (8) the date and time of closing the
24 registration books by the county clerk as required by law.

25 C. After filing the proclamation with the county

1 clerk and not less than fifty days before the date of the
 2 election or twenty days before the date of a special primary
 3 election, the governing body shall publish the proclamation
 4 once each week for two consecutive weeks in a newspaper of
 5 general circulation within the boundaries of the local
 6 government or special district. The proclamation shall con-
 7 form to the requirements of the federal Voting Rights Act of
 8 1965, as amended. "

9 Section 11. REPEAL. --Section 1-15-18.1 NMSA 1978 (being
 10 Laws 1983, Chapter 232, Section 16) is repealed.

11 Section 12. EMERGENCY. --It is necessary for the public
 12 peace, health and safety that this act take effect
 13 immediately.

Underscored material = new
 [bracketed material] = delete

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 6, 1997

Mr. President:

Your RULES COMMITTEE, to whom has been referred

SENATE BILL 61

has had it under consideration and reports same with
recommendation that it DO NOT PASS, but that

SENATE RULES COMMITTEE SUBSTITUTE FOR
SENATE BILL 61

DO PASS, and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

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Gloria Howes, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7
No: Altamirano
Excused: None
Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

February 22, 1997

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

SENATE RULES COMMITTEE SUBSTITUTE FOR
SENATE BILL 61

has had it under consideration and reports same with recommendation
that it DO NOT PASS, but that

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE RULES COMMITTEE SUBSTITUTE FOR
SENATE BILL 61

DO PASS.

Respectfully submitted,

Underscored material = new
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SRC/SB 61

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Ben D. Altamirano, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: None

Excused: Aragon, Carraro, Lyons, Romero

Absent: None

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SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE RULES COMMITTEE SUBSTITUTE FOR
SENATE BILL 61
43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR A SPECIAL PRIMARY ELECTION
FOR THE OFFICE OF UNITED STATES REPRESENTATIVE; AMENDING AND
ENACTING SECTIONS OF THE ELECTION CODE; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Election Code is enacted to
read:

" NEW MATERIAL UNITED STATES REPRESENTATIVE-- VACANCY--
SPECIAL ELECTION AND SPECIAL PRIMARY ELECTION DUTIES. --

A. The secretary of state shall publish the
proclamation calling the special primary election and the United
States representative special election immediately in two major
newspapers of general circulation in the congressional district
and shall send an authenticated copy of the proclamation to each
county clerk by certified mail or by facsimile.

1 B. Each county clerk shall either publish the
2 proclamation in a newspaper of general circulation in the county
3 or shall print and post the proclamation in English and Spanish
4 in six prominent places in the county. "

5 Section 2. A new section of the Election Code is enacted to
6 read:

7 " [NEW MATERIAL] UNITED STATES REPRESENTATIVE--VACANCY--
8 SPECIAL ELECTION AND SPECIAL PRIMARY ELECTION--FILING FEE AND
9 DECLARATION OF CANDIDACY.--A candidate seeking the office of
10 United States representative in a special primary election shall
11 file either a declaration of candidacy accompanied by a filing
12 fee of two hundred eighty dollars (\$280) or a declaration of
13 candidacy accompanied by a pauper's statement with the secretary
14 of state. The pauper's statement shall be sworn and subscribed
15 to on a form prescribed by the secretary of state. "

16 Section 3. Section 1-6-5 NMSA 1978 (being Laws 1969,
17 Chapter 240, Section 131, as amended by Laws 1993, Chapter 314,
18 Section 43 and also by Laws 1993, Chapter 316, Section 43) is
19 amended to read:

20 "1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT--
21 ~~[MAKING]~~ MARKING AND DELIVERY OF BALLOT IN PERSON. --

22 A. The county clerk shall mark each completed absentee
23 ballot application with the date and time of receipt in the
24 clerk's office and enter the required information in the
25 absentee ballot register. The county clerk shall then determine

1 if the applicant is a voter, an absent uniformed services voter or
2 an overseas voter.

3 B. If the applicant has no valid certificate of
4 registration on file in the county and he is not a federal
5 qualified elector or if the applicant states he is a federal
6 qualified elector but his application indicates he is not a federal
7 qualified elector, no absentee ballot shall be issued and the
8 county clerk shall mark the application "rejected" and file the
9 application in a separate file from those accepted.

10 C. The county clerk shall notify in writing each
11 applicant of the fact of acceptance or rejection of his application
12 and, if rejected, shall explain why the application was rejected.

13 D. If the applicant is determined to be a voter or a
14 federal qualified elector, the county clerk shall mark the
15 application "accepted" and deliver or mail to the applicant an
16 absentee ballot and the required envelopes for use in returning the
17 ballot. Acceptance of an application of a federal qualified
18 elector constitutes registration for the election in which the
19 ballot is to be cast. Acceptance of an application from an
20 overseas voter who is not an absent uniformed services voter
21 constitutes a request for changing information on the certificate
22 of registration of any such voter. No absent voter shall be
23 permitted to change his party affiliation during those periods when
24 change of party affiliation is prohibited by the Election Code.
25 Upon delivery or mailing of an absentee ballot to any applicant who

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1 is a voter, an appropriate designation shall be made on the
2 signature line of the signature roster next to the name of the
3 person who has been sent an absentee ballot.

4 E. If an application for an absentee ballot is delivered
5 in person to the county clerk and is accepted, the county clerk
6 shall deliver the absentee ballot and it shall be marked by the
7 applicant in a voting booth of a type prescribed by the secretary
8 of state in the courthouse, sealed in the proper envelopes and
9 otherwise properly executed and returned to the county clerk or his
10 authorized representative before the applicant leaves the office of
11 the county clerk. The act of marking the absentee ballot in the
12 office of the county clerk shall be a convenience to the voter in
13 the delivery of the absentee ballot and does not make the office of
14 the county clerk a polling place subject to the requirements of a
15 polling place in the Election Code other than is provided in this
16 subsection. It shall be unlawful to solicit votes, display or
17 otherwise make accessible any posters, signs or other forms of
18 campaign literature whatsoever in the clerk's office. Except as
19 provided in Subsection F of this section, absentee ballots may be
20 marked in person during the regular hours and days of business at
21 the county clerk's office from 8:00 a.m. on the fortieth day
22 preceding the election up until 5:00 p.m. on the Saturday
23 immediately prior to the date of the election. In marking the
24 absentee ballot, the voter may be assisted by one person of the
25 voter's ~~own~~ choice upon the execution with the county clerk of an

1 affidavit for assistance stating [~~therein~~] that the voter meets at
 2 least one of the conditions for receiving such assistance as is set
 3 forth by the provisions of Section 1-12-12 NMSA 1978.

4 F. For a special primary election and a United States
 5 representative special election, absentee ballots may be marked in
 6 person during the regular hours and days of business at the county
 7 clerk's office from 8:00 a.m. on the fourteenth day preceding the
 8 election up until 5:00 p.m. on the third day prior to that
 9 election.

10 [~~F.~~] G. Absentee ballots shall be airmailed or sent by
 11 facsimile to applicants temporarily domiciled inside or outside the
 12 continental limits of the United States not later than on the
 13 Thursday immediately prior to the date of the election.

14 [~~G.~~] H. No absentee ballot shall be delivered, sent by
 15 facsimile or mailed to any person other than the applicant for such
 16 ballot.

17 [~~H.~~] I. The county clerk shall accept and process with
 18 respect to a primary or general election for any federal office,
 19 any otherwise valid voter registration application from an absent
 20 uniformed services voter or overseas voter received by mail or by
 21 facsimile if the application is received not less than [~~thirty~~] ten
 22 days before the election. The county clerk shall also accept and
 23 process federal write-in absentee ballots from overseas voters in
 24 general elections for federal offices in accordance with the
 25 provisions of Section 103 of the federal Uniformed and Overseas

1 Citizens Absentee Voting Act.

2 J. For a special primary election or a United States
3 representative special election, a qualified elector who is a
4 member of the United States armed forces or the United States
5 merchant marine, a family member of that qualified elector, or a
6 qualified elector living outside the United States, may apply for
7 an absentee ballot by facsimile. If the application for an
8 absentee ballot is received not less than ten days before the
9 election, the clerk may send a facsimile absentee ballot to a
10 qualified elector and the qualified elector may return the voted
11 absentee ballot by facsimile."

12 Section 4. Section 1-6-7 NMSA 1978 (being Laws 1969, Chapter
13 240, Section 133, as amended) is amended to read:

14 "1-6-7. FORM OF ABSENTEE BALLOT. --As soon as candidates and
15 questions to be voted upon have been determined for each election,
16 the county clerk shall procure a supply of suitable absentee
17 ballots. The absentee ballot shall be numbered and shall be, as
18 nearly as practicable, in the same form as prescribed by the
19 secretary of state for emergency ballots. However, to reduce
20 weight and bulk for transport of absentee ballots, the size and
21 weight of the paper for envelopes, ballots and instructions shall
22 be reduced as much as possible. Absentee ballots shall be printed
23 at least forty days prior to the date of a primary election and
24 forty-nine days prior to the date of a general election. Absentee
25 ballots shall be printed and shall be delivered to the county clerk

1 at least sixteen days prior to the date of a special primary
2 election or a United States representative special election.

3 Absentee ballots for any other election shall be printed at least
4 thirty-five days prior to the date of the election. "

5 Section 5. Section 1-6A-5 NMSA 1978 (being Laws 1993, Chapter
6 37, Section 5, as amended) is amended to read:

7 "1-6A-5. PROCESSING APPLICATION. --

8 A. The county clerk shall mark each completed
9 absentee-early application with the date and time of receipt in the
10 clerk's office and enter the required information in the absentee
11 ballot register.

12 B. If the applicant has no valid affidavit of
13 registration on file in the county and he is not a federal
14 qualified elector, he shall not be allowed to vote. The county
15 clerk shall mark the application "rejected" and file the
16 application in a separate file from those accepted.

17 C. If the applicant presents proof of identification and
18 is determined to be a voter or a federal qualified elector, the
19 county clerk shall mark the application "accepted" and deliver a
20 marksense ballot or allow the voter to vote on the direct-recording
21 electronic machine. Upon acceptance of the application, an
22 appropriate designation shall be made on the absentee register.

23 D. Except as provided in Subsection E of this section,
24 absentee-early voting may be done in person during the regular
25 hours of business at the county clerk's office or other locations

1 specified by the county clerk; provided that in class A counties,
2 the county clerk shall establish not less than four alternative
3 locations [~~as satellite polling places~~]. Absentee-early voting may
4 be done from 8:00 a.m. on the twentieth day preceding the election
5 up until 5:00 p.m. on the Saturday immediately prior to the date of
6 the election. In voting absentee-early, the voter may be assisted
7 by one person of the voter's [~~own~~] choice.

8 E. Absentee-early voting for a special primary election
9 or for a United States representative special election may be done
10 at the county clerk's office or other location specified by the
11 county clerk. Where less than the entire territory of a class A
12 county is included in a district where a special primary election
13 or a United States representative special election will be held,
14 the number of absentee-early alternative locations may be reduced
15 proportionally, at the discretion of the county clerk. Absentee-
16 early voting may be done from 8:00 a.m. on the eleventh day
17 preceding the election up until 5:00 p.m. three days prior to the
18 date of the election. In voting absentee-early, the voter may be
19 assisted by one person of the voter's choice.

20 [~~E.-~~] E. The secretary of state and county clerk shall
21 make reasonable efforts to publicize and inform voters of the times
22 and locations for absentee-early voting. "

23 Section 5. Section 1-8-50 NMSA 1978 (being Laws 1977, Chapter
24 322, Section 6, as amended) is amended to read:

25 "1-8-50. INDEPENDENT CANDIDATES FOR GENERAL [~~OR UNITED STATES~~

1 ~~REPRESENTATIVE SPECIAL~~] ELECTIONS-- NOMINATING PETITION FORM --

2 A. As used in Sections [~~3-8-27.1 through 3-8-27.8 NMSA~~
3 ~~1953~~] 1-8-45 through 1-8-52 NMSA 1978, "nominating petition" means
4 the form or forms used for obtaining the required number of
5 signatures of voters [~~which~~] that is signed on behalf of the person
6 wishing to become an independent candidate for a political office
7 in a general [~~or United States representative special~~] election
8 requiring a nominating petition.

9 B. The nominating petition shall be on paper
10 approximately eight and one-half inches wide and fourteen inches
11 long with numbered lines for signatures spaced approximately three-
12 eighths of an inch apart and shall be in the following form:

13 "NOMINATING PETITION FOR INDEPENDENT CANDIDACY

14 I, the undersigned, a registered voter of the
15 county of _____, New Mexico, hereby
16 nominate _____, who
17 resides at _____ in the county of
18 _____, New Mexico, as an independent candidate
19 for the office of _____, to be voted
20 for at the general election [~~(United States~~
21 ~~representative special election)~~] to be held on November
22 _____, 19 _____, and I declare that I am a resident of
23 the state, district, county or area to be represented by
24 the office for which the person being nominated is a
25 candidate. I also declare that I have not signed, and

Underscored material = new
[bracketed material] = delete

will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election.

- 1. _____
 (usual (name printed (address as (city)
 signature) as registered) registered)
- 2. _____
 (usual (name printed (address as (city)."
 signature) as registered) registered)

C. The secretary of state shall furnish to each county clerk a sample of the nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate as provided by the Election Code.

D. The signature of the voter shall not be counted unless the entire line is filled out in full and is upon the form prescribed by this section.

E. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section, and all sheets shall be firmly secured by a staple or other suitable fastening."

Section 6. Section 1-8-52 NMSA 1978 (being Laws 1977, Chapter 322, Section 8, as amended) is amended to read:

"1-8-52. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL ELECTIONS-- NOMINATING PETITIONS-- CIRCULATION-- DATE OF FILING. --

Underscored material = new
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1 A. Declarations of independent candidacy [~~and~~
2 ~~nominating petitions~~] for a vacancy in the office of United
3 States representative shall be filed with the [~~proper filing~~
4 ~~officer~~] secretary of state during the period commencing at
5 9:00 a.m. on the [~~second Tuesday of July of each even-numbered~~
6 ~~year~~] fourteenth day following the issuance of the special
7 primary election proclamation and ending at 5:00 p.m. on that
8 same day [~~and not later than 5:00 p.m. on the fifty-sixth day~~
9 ~~preceding any United States representative special election~~].

10 B. Declarations of independent candidacy and
11 nominating petitions for the office of president of the United
12 States or for any other office to be filled at a general
13 election shall be filed with the proper filing officer during
14 the period commencing at 9:00 a.m. on the fifty-sixth day
15 prior to [~~the~~] that general election and ending at 5:00 p.m.
16 on the same day. "

17 Section 7. Section 1-12-19.1 NMSA 1978 (being Laws 1981,
18 Chapter 156, Section 2, as amended) is amended to read:

19 "1-12-19.1. GENERAL ELECTIONS--WRITE-IN CANDIDATES. --

20 A. A person desiring to be a write-in candidate in
21 a general election [~~a special election for United States~~
22 ~~representative~~] or a statewide special election shall file
23 with the proper filing officer a declaration of intent to be a
24 write-in candidate. The declaration of intent shall be filed
25 between 9:00 a.m. and 5:00 p.m. on the sixty-third day

1 immediately preceding the election.

2 B. The form of the declaration of intent shall be
3 prescribed by the secretary of state and shall contain a sworn
4 statement by the candidate that he is qualified to be a
5 candidate for and to hold the office for which he is filing.

6 C. At the time of filing the declaration of intent
7 to be a write-in candidate, the write-in candidate shall be
8 considered a candidate for all purposes and provisions
9 relating to candidates in the Election Code, including the
10 obligation to report under the Campaign Reporting Act, except
11 that he shall not be entitled to have his name printed on the
12 ballot.

13 D. The secretary of state shall, not less than ten
14 days before the general election, certify the names of the
15 declared write-in candidates to the county clerks of every
16 county affected by such candidacy.

17 E. No person shall be a write-in candidate in the
18 general election who was a candidate in the primary election
19 immediately prior to the general election.

20 F. A vote for a write-in candidate shall be counted
21 and canvassed only if:

22 (1) the name written in is the name of a
23 declared write-in candidate and shows two initials and last
24 name; first name, middle initial or name and last name; first
25 and last name; or the full name as it appears on the

1 declaration of intent to be a write-in candidate and
2 misspellings of the above combinations that can be reasonably
3 determined by a majority of the members of the precinct board
4 to identify a declared write-in candidate; and

5 (2) the name is written in the proper office or
6 entered upon the keyboard on the voting machine or on the
7 proper line provided on a marksense ballot, absentee ballot or
8 emergency paper ballot for write-in votes for the office for
9 which the candidate has filed a declaration of intent.

10 G. No unopposed write-in candidate shall have his
11 election certified unless he receives at least the number of
12 write-in votes as he would need signatures on a nominating
13 petition pursuant to the requirements in Section 1-8-33 NMSA
14 1978.

15 H. A write-in vote shall be cast by writing in the
16 name. As used in this section, "write-in" does not include
17 the imprinting of any name by rubber stamp or similar device
18 or the use of preprinted stickers or labels. "

19 Section 8. Section 1-13-16 NMSA 1978 (being Laws 1969,
20 Chapter 240, Section 319, as amended) is amended to read:

21 "1-13-16. POST-ELECTION DUTIES--STATE CANVASS METHOD.--

22 A. The state canvass shall be made from the
23 election returns transmitted directly to the secretary of
24 state from each of the precinct boards and, in the case of
25 candidates voted upon by a district composed of two or more

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[bracketed material] = delete

1 counties, from the certificates transmitted by the county
2 canvassing boards.

3 B. Upon the completion of the canvass, but not
4 sooner than the thirty-first day after any primary, general or
5 district special election, or the tenth day after any special
6 primary election or United States representative special
7 election, the state canvassing board shall issue to those
8 candidates entitled by law the appropriate certificate of
9 election or, in the case of a primary election or special
10 primary election, a certificate of nomination.

11 C. The state canvassing board may designate a
12 person or persons to compare the totals appearing on the
13 election returns, statements of canvass and certificates and
14 to certify the results of their findings to the state
15 canvassing board. "

16 Section 9. Section 1-15-18.1 NMSA 1978 (being Laws 1983,
17 Chapter 232, Section 16) is amended to read:

18 "1-15-18.1. UNITED STATES REPRESENTATIVE--VACANCY. --

19 A. Except as provided in Subsection E of this
20 section, ten days after a vacancy occurs in the office of
21 United States representative the governor shall, by
22 proclamation, call a special primary election and a special
23 election [~~to be held not less than eighty-four nor more than~~
24 ~~ninety-one days after the date of the vacancy for the purpose~~
25 ~~of filling the vacancy, except as provided in Subsection E of~~

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1 ~~this section.~~

2 ~~B. Upon the issuance of the governor's~~
 3 ~~proclamation, each qualified political party may nominate in~~
 4 ~~the manner provided by the rules of that party a candidate to~~
 5 ~~fill the vacancy in the office of United States~~
 6 ~~representative; provided that such nomination is certified to~~
 7 ~~the secretary of state by the state chairman of that party no~~
 8 ~~later than 5:00 p.m. on the fifty sixth day preceding the date~~
 9 ~~of the special election]. Not more than sixty days after the~~
 10 ~~issuance of the proclamation a special primary election shall~~
 11 ~~be conducted and not more than ninety days after the issuance~~
 12 ~~of the proclamation a United States representative special~~
 13 ~~election shall be conducted in the congressional district in~~
 14 ~~which the vacancy has occurred.~~

15 B. Major party candidates for the special primary
 16 election shall file a declaration of candidacy between the
 17 hours of 9:00 a.m. and 5:00 p.m. on the fourteenth day
 18 following the issuance of the election proclamation.
 19 Nominations by minor political parties may be certified in
 20 writing to the secretary of state by the chairman and
 21 secretary of the minor party; provided that any certification
 22 shall be filed with the secretary of state no less than seven
 23 days after the special primary election.

24 C. Declarations of independent candidacy to fill
 25 the vacancy in the office of United States representative [~~and~~

1 ~~nomi nating petitions pertaining thereto~~ shall be ~~[filed with~~
2 ~~the secretary of state no later than 5:00 p.m. on the fifty-~~
3 ~~sixth day preceding the date of the special election]~~ made in
4 the manner provided in Section 1-8-52 NMSA 1978.

5 D. Special elections called for the purpose of
6 filling a vacancy in the office of United States
7 representative shall be conducted in accordance with the
8 provisions of the Election Code; provided, however, if there
9 is a conflict between this section and other provisions of the
10 Election Code, the provisions of this section shall control.

11 E. If a vacancy occurs in the office of United
12 States representative after the date of the regular primary
13 election and before the date of the general election of that
14 same year, such vacancy shall be filled at that general
15 election of the same year. Candidates seeking the office of
16 United States representative in such general election for the
17 next succeeding term shall be deemed to be candidates for the
18 unexpired term as well, and the candidate elected shall take
19 office upon the certification of the election results. "

20 Section 10. EMERGENCY. --It is necessary for the public
21 peace, health and safety that this act take effect
22 immediately.